

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 13-205(DSD/FLN)

United States of America,

Plaintiff,

v.

**ORDER**

David Jermaine Griffith,

Defendant.

Thomas Calhoun-Lopez, United States Attorney's Office, 300 South 4<sup>th</sup> Street, Suite 600, Minneapolis, MN 55415, counsel for plaintiff.

James S. Becker, Office of the Federal Defender, 300 South Fourth Street, Suite 107, Minneapolis, MN 55415, counsel for defendant.

This matter is before the court upon the motion by defendant David Jermaine Griffith to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Griffith argues that his sentence should be corrected because it was based on the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), which the Supreme Court held to be unconstitutional in Johnson v. United States, 135 S. Ct. 2551 (2015). The government agrees that, in light of Johnson and Mathis v. United States, 136 S. Ct. 2243 (2016), the sentencing provisions of the ACCA no longer apply to Griffith because his two 1994 Kentucky convictions for third degree burglary and his 2005 Minnesota conviction for fleeing a police officer are no longer predicate offenses.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Defendant's motion [ECF No. 77] is granted;
2. Defendant will be re-sentenced at a date to be determined by the court; and
3. U.S. Probation and Pretrial Services shall provide the court with a revised presentence investigation report.

Dated: October 25, 2016

s/David S. Doty  
David S. Doty, Judge  
United States District Court